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# Trade, environment and sustainable development

## Report of the Secretary-General

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## INTRODUCTION

1. The present report provides preliminary conclusions and recommendations emanating from the consideration of a number of key issues relating to the linkages between trade, environment and sustainable development. The issues covered include: trade and development aspects of multilateral environmental agreements (MEAs), including the relationship between the provisions of the multilateral trading system and trade measures pursuant to MEAs; environmental policies and competitiveness; eco-labelling; exports of domestically prohibited goods; finance and technology transfer; sustainable development of the commodity sector; and capacity-building and institutional issues. A number of these issues figure on the agenda of the Committee on Trade and Environment (CTE) of the World Trade Organization (WTO) and will be further discussed at the first Ministerial Conference of WTO, to be held at Singapore, in December 1996. Certain issues have been discussed in the Ad Hoc Working Group on Trade, Environment and Development of the United Nations Conference on Trade and Development (UNCTAD), which completed its work in November 1995, or have been referred to in the report of the Commission on Sustainable Development on its third session. 1/

2. The report was prepared by the UNCTAD secretariat as task manager for trade, environment and sustainable development, in accordance with arrangements agreed by the Inter-Agency Committee on Sustainable Development (IACSD) at its fourth session. It is the result of consultation with the secretariats of the United Nations Environment Programme (UNEP), the Department for Policy Coordination and Sustainable Development of the United Nations Secretariat, and WTO.

3. Further analysis of these issues is contained in the addendum to this report (E/CN.17/1996/8/Add.1), which was also prepared by the UNCTAD secretariat.

## CONCLUSIONS AND RECOMMENDATIONS

### A. Conclusions

#### 1. Trade measures in multilateral environmental agreements: trade and development aspects

4. Multilateral environmental agreements (MEAs) are an important and effective means of addressing global environmental problems and avoiding the use of extraterritorial, unilateral measures. As called for in the Rio Declaration (in particular, principles 7, 12 and 27), 2/ MEAs and any trade provisions therein should be based on multilateral cooperative approaches and the principle of common but differentiated responsibilities of States.

5. Agenda 21 recognized that a number of cases, trade provisions in MEAs have played a role in tackling global environmental challenges. It also suggested more precision, where necessary, and clarification of the relationship between

GATT/WTO provisions and some of the multilateral measures adopted in the environmental area. 3/

6. The WTO Committee on Trade and Environment (CTE) is examining the relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, pursuant to multilateral environmental agreements. Several considerations are relevant.

7. First, where trade is not the primary cause of the environmental problem, there should be a presumption against the use of trade measures. Other instruments such as access to finance and technology transfer are likely to be more efficient and more equitable in securing cooperation and in achieving the environmental objectives of the MEA. Trade measures, where effective and necessary to achieve the environmental objectives of a particular MEA, should only be used as a last resort. Use of trade measures should not deter the continued search for other options which are equally - or more - effective and equitable, and uphold principles 7 and 12 of the Rio Declaration.

8. Secondly, trade provisions in MEAs may have different objectives and should be analysed separately for each MEA. In such an analysis, concepts such as necessity, effectiveness and proportionality are important. The aim should be to implement measures that are not more trade restrictive than necessary to fulfil the multilaterally agreed objectives of the agreement. However, it may be difficult to judge the necessity and effectiveness of trade measures, in particular where trade measures are part of a package of measures, including positive measures (such as access to finance and transfer of technology, incentives to encourage trade in environment-friendly substitutes, voluntary mechanisms on foreign direct investment and technology transfer, and market-based instruments). There is therefore a clear premium attached to establishing comprehensive non-binding guidelines for MEA negotiators.

9. Thirdly, both trade and environmental agreements are evolving bodies of international law which, inter alia, may raise the question of hierarchy between the two. Attempts to achieve consistency between the obligations of MEAs and WTO could conceivably take place at three levels: (a) by trade and environment officials and other interested parties at the national level; (b) by seeking relevant inputs from trade officials when trade measures are considered in the negotiation of MEAs or their amendments; and (c) by seeking clarification of the relevant provisions of the MEA with respect to WTO rules.

10. Discussions at CTE have focused on: the use of trade measures against non-parties who are members to WTO; what constitutes an MEA; issues such as necessity, effectiveness and proportionality of using trade measures in MEAs; the specificity of trade measures pursuant to an MEA: transparency and notification provisions; the resolution of possible disputes between a non-party and a party to an MEA; and the issue of hierarchy between the MEA and WTO, in particular in the case of dispute settlement. Different approaches advocated by delegations at the WTO Committee on Trade and Environment include the status quo, the ex ante and the ex post approach, and a combination of ex ante and ex post approaches, which have been described in the addendum.

11. Apart from legal questions, trade measures pursuant to MEAs may involve wider economic and developmental issues. Costs of compliance may differ widely among parties to an MEA, based on variables like the specificity of standards; the price, availability and adequacy of substitutes; the degree of patent protection of specified technologies; administrative and other factors. Trade and competitiveness effects are different for each agreement and may change according to dynamic factors such as the rate of economic growth, availability of environmentally friendly technologies and substitutes, amendments to the agreements, and the timely availability of finance. Interim assessments of MEAs could be an opportunity for the conferences of parties to take account of these factors.

12. Costs may also vary in accordance with the levels of economic development and existing environmental standards prior to a country's accession to an MEA. It is to be noted that economic and development costs will not necessarily or even probably be correlated with the shares of responsibility for environmental damage or remedy. In this context, it is important to apply the principle of common but differentiated responsibility in the context of MEAs.

13. In parallel with the CTE process, the international debate so far indicates that there may be a need to develop comprehensive non-legally binding guidelines aimed at assisting MEA negotiators in their consideration of possible future use of trade measures in MEAs and of a whole range of policy instruments, including positive measures. Since such guidelines involve many aspects, including legal, economic and developmental considerations, different organizations may need to be involved in the process, in accordance with their respective mandates and competence.

2. Environmental policies and competitiveness

14. Environmental policies addressing local environmental problems may have positive and negative effects on competitiveness. Given the complexity of the linkages between environmental requirements and competitiveness, sound analysis is necessary, particularly additional empirical research on the conditions under which competitiveness impacts are likely to be positive and those under which they may be negative. Discussions have focused on competitiveness at the firm and sector level, and on the concept of national welfare.

15. UNCTAD's Ad Hoc Working Group on Trade, Environment and Development, endorsing a recommendation contained in the report of the Joint Session of Trade and Environment Experts to the OECD Council at the ministerial level, has firmly rejected demands sometimes made to introduce so-called "green countervailing duties" or other protectionist trade measures inconsistent with WTO principles to compensate for negative competitiveness effects, whether real or perceived, of environmental policies. 4/ It is also acknowledged that it would be inappropriate to relax environmental standards or their enforcement in order to encourage foreign direct investment or to promote exports.

16. While competitiveness concerns have been expressed by firms both in developing and developed countries, the nature of the concerns differ widely. It may be relatively more difficult for firms in developing countries, especially small and medium-sized enterprises (SMEs), to adjust to rapid changes

in environmental requirements. Likewise, given the concentration of developing countries' exports in sectors where environmental requirements are emerging and the fact that the share of SMEs in total exports of a number of developing countries is relatively high, exports from developing countries may be more vulnerable to adverse competitiveness effects of environmental policies. Efforts should also be made to identify win/win situations and to design and implement policies that maximize the mutual supportiveness of trade and environmental policies.

17. Complying with the environmental requirements of importing countries may raise particular competitiveness and developmental concerns for developing countries and countries with economies in transition and may divert resources from investments (e.g, sanitation and education) which may yield higher returns to the environment, taking into account direct and indirect effects. In this context, positive measures are particularly relevant. The UNCTAD Ad Hoc Working Group on Trade, Environment and Development has concluded that positive measures such as improved market access, improved access to finance, transition mechanisms, access to and transfer of technology, capacity-building and special provisions for small firms and for some sectors are effective instruments in supporting developing countries and countries in transition in their efforts to meet the objectives of sustainable development. 5/

3. Eco-labelling

18. Eco-labelling programmes are established essentially for environmental purposes and provide an opportunity for producers to differentiate and market products on the basis of their environmental attributes.

19. Eco-labels are being increasingly developed in sectors of export interest to the developing countries, a trend which has generated concern in those countries. Because of their potential to affect exports, eco-labelling and other instruments based on life-cycle analysis must be sensitive to differing environmental and developmental conditions across countries. Particular process-related criteria may not be as effective and relevant in terms of environmental protection in the exporting country as they are in the importing country. Improved transparency, including transparency through consultation with foreign suppliers, and the establishment of mutual recognition between eco-labelling schemes and equivalencies between eco-criteria may assist in promoting the compatibility of trade and environment interests.

4. Exports of domestically prohibited goods

20. Developing countries have expressed concern that developed countries may export to their markets products that are banned or severely restricted in the country of origin - domestically prohibited goods (DPGs) - without providing adequate information about the risks such products could pose to public health or the environment. The issue of domestically prohibited goods is on the agenda of the WTO Committee on Trade and Environment, and discussions there have focused on the adequacy of the transparency mechanisms, the issue of product coverage and the need to avoid duplication. Developing countries have expressed the view that existing mechanisms may be inadequate both in terms of the procedure and in terms of coverage of products. For example, in none of the

Conventions does the prior informed consent procedure include consumer products such as cosmetics, pharmaceutical, processed food and other such items. Analysis of DPGs should take account of the ongoing negotiations of a convention on prior informed consent.

5. Trade liberalization and the environment

21. Trade liberalization and improved market access, in conjunction with sound environmental policies, contribute to sustainable development. Although there is no clear linkage between trade liberalization and the environment, a priori trade liberalization could lead either to environmental improvements or degradation. Thus, any possible environmental costs associated with trade liberalization should also be considered. In this context, the Commission, at its third session, recognized that national Governments have an interest in analysing the environmental and social effects of significant changes in the volume and composition of production and consumption patterns, including those resulting from trade policy reforms, and make, if required, the necessary policy adjustments with a view to correcting market and policy failures and internalizing environmental costs. Underpricing of natural resources and subsidies can have a significant impact on both trade and the environment. Of particular relevance are subsidies that affect commodity prices, especially those agricultural and energy subsidies that may have harmful effects on both trade and the environment of developing countries.

22. It is also important to analyse the environmental benefits of removing trade restrictions and distortions. This should include an analysis of the effects of trade-distortive subsidies, tariff escalation and tariff and non-tariff barriers in major export markets on sustainable development in developing countries.

6. Sustainable development of the commodity sector

23. Research and discussions at UNCTAD and elsewhere have shown that there is a vital need to understand better the broad social and economic costs and benefits of specific actions or inactivity with regard to the environment. This will imply a change in the relative price structure. Sustainable development, particularly that of the commodity sector, requires that environmental costs and benefits be taken into account in economic strategies. Developing countries face special constraints in this respect, owing to the importance of poverty alleviation in the short term and the central role that foreign exchange earnings play in the development process. Analytical and administrative shortcomings also create significant bottlenecks for policy design and implementation.

24. The constraints that developing countries face could be considerably alleviated through international cooperation and the targeting of assistance to specific problem areas, including those at the assessment and policy levels. The search for the most efficient and cost-effective approaches to such cooperation would be facilitated by the participation of different actors, including industry associations in formulating the modalities of cooperation. There is also much to be learned by the concerned countries from the specific experiences of others.

7. Biological diversity and trade issues

25. Sustainable development requires taking into account the limited capacity of developing countries to assess adequately the economic value of their biological resources and to develop the appropriate economic incentives that could contribute to the achievement of the main goals of the Convention on Biological Diversity. It is precisely because biological resources, if managed effectively, can create a basis for sustainable development that there is a need to launch mechanisms that would support developing countries in their efforts towards the identification, development and marketing of products and services that draw upon their unique biological and human resources. In addition, as developing countries position themselves in the emerging market for biological resources, it will be important to develop mechanisms that will seek to secure an equitable sharing of the benefits derived from the use of such resources. The BIOTRADE Initiative of UNCTAD is one of the possible mechanisms in this regard.

26. Decision II/12, adopted by the Conference of the Parties to the Convention on Biological Diversity at its second meeting (Jakarta, November 1995), requests the Executive Secretary to, inter alia, liaise with the Secretariat of WTO to inform it of the goals and the ongoing work of the Convention on Biological Diversity and to invite the secretariat of WTO to assist in the preparation of a paper for a future meeting of the Conference of the Parties which would identify the synergies and relationship between the objectives of the Convention and the WTO Agreement on Trade-related Intellectual Property Rights (TRIPs). Another concern is whether the existing systems on intellectual property rights provide them with sufficient safeguards to protect their traditional knowledge and whether it allows them to share equitably in the development of bio-technologies. Another important issue is the relationship between the TRIPs Agreement in WTO and the Convention on Biological Diversity. Those issues require further analysis. There are many overlapping trade issues which need analysis to ensure that developing countries can maximize their sustainable resource management. Work in this area is being planned by UNEP and the secretariat of the Convention on Biological Diversity.

8. Technology transfer

27. With respect to intellectual property rights, developing countries are concerned that such protection may reduce their ability to access environmentally sound technologies in order to promote sustainable development. Their concerns centre around whether TRIPs facilitates access to and transfer of technology, the development of environmentally sound technologies, and in its operation ensures compatibility with the relevant provisions of MEAs. Another concern is whether the TRIPS Agreement reduces the possibility of controlling technology that may have adverse environmental effects. On the other hand, it has also been noted that though the TRIPS Agreement may increase difficulties in accessing environmentally sound technologies, it also may encourage investment in and development and transfer of environmentally sound technologies. It may also offer alternative mechanisms such as compulsory licensing and innovative sui generis systems to protect traditional knowledge. Other issues pertaining to the transfer of environmentally sound technology are discussed in the report of the Secretary-General on that subject (E/CN.17/1996/13 and Add.1).

9. Capacity-building

28. Further progress has been made by UNCTAD, UNEP and the United Nations Development Programme (UNDP) in the implementation of technical assistance programmes for capacity-building. UNCTAD and UNDP jointly identified four areas for further capacity-building on trade, environment and development. They include:

(a) Strengthening research activities in developing countries;

(b) Supporting institutional capacity-building which may contribute to better integration of trade and development policies and greater policy coherence;

(c) Supporting the timely and effective participation of developing countries in international trade negotiations and international environmental negotiations;

(d) Support to the private sector, in particular small and medium-sized firms.

UNCTAD's Ad Hoc Working Group on Trade, Environment and Development considered that country case studies constitute a relevant tool in examining the effects deriving from the linkages of environmental and trade policies, both at the national and international levels. The Working Group encouraged the continuation of those studies by UNCTAD, in cooperation with UNDP and UNEP. ITC also has an important role to play in technical assistance.

10. Institutional issues

29. Since the third session of the Commission, progress has continued to be made in international forums in addressing issues related to trade, environment and sustainable development. The WTO Committee on Trade and Environment continued its deliberation in preparation of the ministerial meeting to be held in Singapore in December 1996. The UNCTAD Ad Hoc Working Group on Trade, Environment and Development completed its work, in accordance with its terms of reference, and recommended areas for future UNCTAD activities in the area of trade, environment and development. Trade and environment will also be a topic in UNCTAD at its ninth session (UNCTAD IX). The OECD Joint Session of Trade and Environment Experts presented the results of its work to the OECD Council at the ministerial level and embarked upon a new programme of work.

30. The secretariats of WTO, UNCTAD and UNEP have further strengthened their cooperation and coordination. In particular, the Director-General of WTO and the Secretary-General of UNCTAD have agreed to strengthen further the working relationship between the two organizations in a number of areas, including that of trade and environment. UNCTAD and UNEP are cooperating on a number of issues, in particular on MEAs, the concepts of equivalencies and mutual recognition in the context of eco-labelling and - together with UNDP - in the area of capacity-building.

11. Research agenda

31. The Commission, at its third session, invited UNCTAD, in cooperation with UNEP, WTO, the Food and Agriculture Organization of the United Nations (FAO), the World Health Organization (WHO), the Department for Policy Coordination and Sustainable Development of the United Nations Secretariat and other appropriate institutions to prepare a background paper for the Commission which would review the growing volume of research on trade, environment and sustainable development linkages carried out by international organizations, academic institutions and non-governmental organizations in developed and developing countries, including such research in the framework of projects supported by international and bilateral aid agencies, with a view to identifying possible gaps, through the use of independent trade and environment expert groups, among other methods.

32. A preliminary version of the paper is being made available to the Commission as a background note (English only). The preliminary conclusions indicate that further research is needed in particular in the following areas:

(a) Trade liberalization and the environment, including the effects of reducing or eliminating agricultural and energy subsidies on sustainable development;

(b) Environmental protection, technology transfer and trade-related intellectual property rights;

(c) Trade, environmental and developmental effects of voluntary standards, including concepts such as mutual recognition and equivalencies;

(d) Enterprise development and sustainable development policies in developing countries, particularly small-scale enterprises;

(e) Innovative financing mechanisms to support developing countries in their efforts to internalize costs;

(f) In the context of MEAs, positive measures, such as incentives, to encourage trade in environment-friendly substitutes, voluntary mechanisms on foreign direct investment and technology transfer, and market-based instruments.

## B. Recommendations

### 1. Trade measures in multilateral environmental agreements: trade and development aspects

33. The Commission may wish to:

(a) Stress the need to develop a greater range of more attractive positive measures, such as effective instruments to facilitate financial and technology transfers to developing countries in order to assist them to meet multilaterally agreed targets, in keeping with the principle of common but differentiated responsibility; and recommend that positive measures are preferable to the threat of the use of trade restrictions to secure compliance with the objectives

of the MEA. Positive measures could also be employed to complement trade measures and to reduce or obviate the necessity for trade measures to secure compliance with MEAs;

(b) Encourage Governments to ensure appropriate coordination between trade and environment officials at the national and international levels, with a view to promoting compatibility between trade and environment policies and thereby avoiding conflicts among treaties in which they participate;

(c) Invite UNCTAD and UNEP jointly, in cooperation with the secretariats of relevant MEAs, and taking into account the discussions by the Commission at its fourth session, to initiate an intergovernmental process aimed at developing comprehensive non-binding guidelines (i.e., incorporating legal, economic and development considerations) to assist MEA negotiators in their consideration of the possible future use of trade and other measures in MEAs, with a view to promoting sustainable development as well as compatibility between trade and environmental policies.

2. Environmental policies and competitiveness

34. The Commission may wish to:

(a) Firmly reject "green countervailing duties" or other protectionist trade measures, inconsistent with WTO principles, to compensate for negative competitiveness effects, whether real or perceived, of environmental policies;

(b) Considering that complying with the environmental requirements of importing countries may raise particular competitiveness concerns for developing countries and countries with economies in transition, recommend that Governments of developed countries facilitate market access for developing countries and provide them with technical and financial assistance directed towards environmental capacity-building;

(c) Encourage UNCTAD at its ninth session to propose positive measures at the national and international levels aimed at supporting developing countries in their efforts to achieve the objectives of sustainable development;

(d) Take note of the progress report, submitted by UNCTAD, of the analytical study on the relationship of environmental protection to international competitiveness, job creation and development, and invite UNCTAD to elaborate on the study, with the contributions of Governments, regional economic integration organizations, the private sector, non-governmental organizations and other relevant regional and international organizations, and to submit the results to the Commission at its fifth session, in 1997.

3. Eco-labelling

35. The Commission may wish to invite Governments to ensure adequate transparency of newly emerging environmental policy measures with possible trade effects, including eco-labelling, inter alia, by considering contributions from interested parties, including consumer and environmental groups and foreign producers, at an appropriately early stage in the design of the measures, and to

encourage private standardization bodies to do the same; invite national Governments and standardization bodies to explore the scope for mutual recognition and equivalencies at an appropriate level of environmental protection; and invite ISO to give the fullest possible consideration to these concepts in the elaboration of international standards or guiding principles for environmental labelling.

4. Exports of domestically prohibited goods

36. The Commission may wish to invite UNEP and FAO, in cooperation with other relevant organizations, to examine existing and proposed instruments on DPGs and to thoroughly examine the obligations on exporters and importers in order to improve transparency procedures and provide technical assistance to importers in order to assess and understand the information provided by the exporters.

5. Trade liberalization and the environment

37. The Commission may wish to:

(a) As called for in chapter 2 of Agenda 21, encourage UNEP, in consultation with UNCTAD, to examine mechanisms to ensure that environmental policies provide the appropriate legal and institutional framework to respond to the new needs for the protection of the environment that may result from changes in production and trade specialization;

(b) Invite UNCTAD, in cooperation with other relevant organizations, to examine how further trade liberalization (e.g., through the reduction or elimination of tariff escalation, trade-distortive subsidies and the elimination of tariff and non-tariff obstacles to developing countries' exports) can result in environmental benefits and contribute to sustainable development.

6. Sustainable development of the commodity sector

38. The Commission may wish to:

(a) Invite UNCTAD, in cooperation with UNEP, UNIDO and other relevant organizations, to assist developing countries in implementing pilot projects in export-oriented production and processing activities aimed at taking account of environmental costs;

(b) Encourage Governments to intensify the search for pragmatic methods for increasing cooperation between exporters and importers with a view to facilitating the efforts of developing countries to take account of environmental costs in their development process and to assess the scope for the establishment of sectoral round tables and other formal or informal arrangements for identifying efficient and cost-effective approaches.

7. Biological diversity and trade issues

39. The Commission may wish to encourage UNCTAD to implement its BIOTRADE Initiative as a collaborative effort with the secretariat of the Convention on Biological Diversity, interested United Nations agencies and other

intergovernmental and non-governmental organizations, the private sector, local communities and academic institutions.

8. Technology transfer

40. The Commission may wish to invite UNIDO, UNEP and UNCTAD to carry out empirical studies on constraints (and mechanisms for alleviating them) to the dissemination of environmentally sound technologies, including those necessary to meet external environmental measures and requirements, inter alia, through international cooperation and support, and invite UNEP to continue its activities in this regard, particularly in cooperation with the private sector.

9. Capacity-building

41. The Commission may wish to invite UNCTAD, UNDP, ITC, UNEP and other United Nations agencies to strengthen cooperation in the implementation of a programme of technical assistance for capacity-building, in accordance with the mandates and expertise of each agency, inter alia, with a view to assisting developing countries and countries with economies in transition to participate effectively in international deliberations on trade and environment, international trade negotiations and international environmental negotiations.

10. Institutional issues

42. The Commission may wish to:

(a) Welcome the progress made in the work of the WTO Committee on Trade and Environment and invite Ministers to consider all items listed in the Marrakesh Decision on Trade and Environment of 15 April 1994, taking into account the objectives of Agenda 21 and the Rio Declaration, and to give due consideration to the results of deliberations of the Commission at its fourth session;

(b) Invite the Ministerial Conference of WTO, to be held at Singapore, to reconvene the Committee on Trade and Environment, with a view to continuing its important work;

(c) Invite UNCTAD and UNEP to transmit the results of their activities on trade, environment and sustainable development to the Ministerial Conference of WTO;

(d) Welcome the progress made in the work of UNCTAD and request UNCTAD to continue to address comprehensively issues related to trade, environment and development and recommend that UNCTAD, at its ninth session, take the appropriate steps for the creation of a new body to carry out intergovernmental activities after the Conference, on a continuing basis;

(e) Invite UNCTAD and UNEP to continue their joint programme of work on trade, environment and sustainable development, in accordance with the views expressed by the Commission on Sustainable Development at its third session 6/ and by the General Assembly in resolution 50/95;

(f) Note the ongoing work of OECD on trade and environment and encourage it to submit the results of its work to the Commission on Sustainable Development.

11. Research agenda

43. The Commission may wish to take note of the preliminary background paper, prepared by UNCTAD, on the research on trade, environment and sustainable development linkages carried out by international organizations, academic institutions and non-governmental organizations in developed and developing countries, and the conclusions and recommendations contained therein; encourage additional research in particular areas where gaps have been identified; and recommend that international and bilateral aid agencies support research activities in developing countries, in particular in those areas.

## Notes

1/ Official Records of the Economic and Social Council, 1995, Supplement No. 12 (E/1995/32), chap. I, sect. A.5.

2/ Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, vol. I, Resolutions Adopted by the Conference (United Nations publication, Sales No.E.93.I.8 and corrigenda), resolution I, annex I.

3/ Ibid., annex II, chap. 2.22 (j).

4/ TD/B/42(2)/9-TD/B/WG.6/11, para. 50.

5/ Ibid., para. 48.

6/ Official Records of the Economic and Social Council, 1995, Supplement No. 12 (E/1995/12), chap. I, para. 59.

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# Trade, environment and sustainable development

## Report of the Secretary-General

## Addendum

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# I. GENERAL OVERVIEW

## A. Multilateral environmental agreements: trade and development aspects

1. The present report covers several key issues in the ongoing trade and environment debate. Following suggestions made by the Inter-Agency Committee on Sustainable Development (IACSD), it elaborates on the international debate on the relationship between the provisions of the multilateral trading system and trade measures pursuant to multilateral environmental agreements (MEAs). It is to be noted that of the approximately 180 MEAs that have been negotiated, only some 18 contain trade provisions. 1/ Therefore, there may be only a limited number of MEAs and a limited range of trade measures to consider in the context of the rules of the multilateral trading system. Moreover, trade measures should not be expected to be a regular feature of MEAs, given that trade measures are not necessarily the most effective means to achieve environmental objectives. Many consider that positive incentives, such as technology transfer, financial and technical assistance, are a better means to encourage participation. Others consider that positive measures could complement trade measures and reduce or obviate the need for their use. It is also to be noted that of all the MEAs negotiated after the United Nations Conference on Environment and Development, none contain trade measures.

2. Examples can also be given of efforts to harmonize standards through voluntary initiatives like sustainable forestry management principles; standards related to biosafety under the Convention on Biodiversity; harmonized chemical safety criteria and standards under the Intergovernmental Forum on Chemical Safety and other measures. In addition, the FAO Code of Conduct for Responsible Fisheries sets out principles and international standards of behaviour for responsible practices with a view to ensuring the effective conservation, management and development of living aquatic resources, with due respect for the ecosystem and biodiversity. 2/

3. According to the Code, international trade in fish and fishery products should be conducted in accordance with the principles, rights and obligations established in the World Trade Organization (WTO) agreement and other relevant international agreements. States should ensure that their policies, programmes and practices related to trade in fish and fishery products do not result in obstacles to that trade, environmental degradation or negative social impacts, including nutritional impacts.

### 1. Trade measures in MEAs

4. Trade provisions in MEAs have several purposes. First, they may be the basis for the fulfilment of environmental objectives, particularly among parties (e.g., the Basel Convention and the Convention on International Trade and Endangered Species of Wild Fauna and Flora (CITES)). Secondly, against non-parties, they may be thought to be necessary to ensure the effectiveness of an MEA. Thirdly, they may aim at persuading countries to accede to an agreement by making the costs of not joining higher than that of joining. Fourthly, against non-parties they are aimed at preventing "free-riding".

5. The principal trade provision in the Montreal Protocol on Substances that Deplete the Ozone Layer 3/ is the ban on trade with non-parties. However, discriminatory trade measures against non-parties which have assumed similar commitments are not allowed by the Montreal Protocol. After different adjustments and amendments, the scope and timing of the trade measures has become more complicated. For example, developing (and other) countries that have not ratified the London and/or Copenhagen amendments (or assumed similar commitments to those contained in the amendments) are considered as non-parties for the substances concerned, and hence could become subject to trade restrictions.

6. In the case of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal 4/ under its original terms, hazardous wastes could generally not be traded between a party and a non-party (except via article 11), whereas transboundary movements are permitted between parties, under certain conditions. 5/ The Conference of the Parties at its second meeting (March 1994) proposed banning the export of hazardous wastes from OECD member States to non-OECD member States and agreed to amend the Convention accordingly in September 1995. The ban would take effect for exports for final disposal and for recycling as of 1 January 1998. This amendment, however, has yet to be ratified by the parties. The ban was largely a response to the fact that hazardous wastes had been exported from developed to developing countries for the stated purpose of recycling but without the importing country having the technical capacity to manage the waste in an environmentally sound manner.

7. In the case of the Convention on International Trade in Endangered Species (CITES), the use of trade provisions to regulate commercial trade in endangered and other species was seen as an important contribution to resolving the problem. Thus, when a species reaches a certain level of vulnerability, the parties to the Convention can list it in one of three appendices. This placement determines the extent to which trade is regulated in the species.

2. Effects on trade and competitiveness

8. While yielding global environmental benefits, MEAs have broad economic effects. The costs of environmental standard implementation differ widely among parties to an MEA, based on variables like the specificity of the standard, the availability and adequacy of substitutes, the degree of patent protection of specified technologies, administrative costs and other factors. Costs vary in accordance with the levels of economic development and existing environmental standards prior to the introduction of the international standard. In certain cases, MEAs may impose relatively higher costs on developing countries. Positive economic benefits may also accrue, particularly when the use of positive measures is encouraged by the MEA.

9. MEAs have effects on trade and competitiveness irrespective of whether they have trade provisions. UNCTAD's Ad Hoc Working Group on Trade, Environment and Development recognizes that the effects of MEAs on trade and competitiveness are different for each agreement and change according to dynamic factors such as the rate of economic growth, availability of environmentally friendly technologies and substitutes, amendments to the agreements, and timely availability of finance.

10. In the case of the Montreal Protocol, while benefits accrue globally, the costs of compliance may be different for developed and developing countries' parties. (The Multilateral Fund is meant to address the issue of additional financing required by developing countries seeking to comply with the Protocol.) The costs could be grouped as follows:

(a) The phase out of controlled substances in developed countries may affect developing countries if controlled substances become expensive or substitutes become expensive or not available;

(b) Exports of products containing controlled substances may themselves become less competitive;

(c) Sectors relying on the use of controlled substances may be affected. For example, sectors depending on refrigeration, such as fruits, dairy products and certain mining activities may encounter cost increases;

(d) Production lines and technologies may themselves have to be changed in order to use substitutes, and existing technologies may become difficult to service. The significance of each of these factors is, to a large extent, an empirical question.

11. In the case of the Basel Convention, it is more difficult to conceptualize the effect on competitiveness in developing countries and countries in transition. To the extent that hazardous wastes exported to developing countries result in the contamination of soil and adjacent waters, they may reduce future productivity and economic uses of those natural resources, besides endangering human, animal and plant life. By helping to prevent this, the Basel Convention may have positive effects on the welfare and competitiveness of developing countries and countries in transition.

12. The debate on the effects of the Basel Convention on trade and competitiveness, however, tends to focus on the issue of recycling. Some industries which obtain part of their materials from recyclable wastes may be affected by the Basel Convention. Work by a technical working group is aimed at ensuring that trade in metals containing only relatively small and harmless amounts of hazardous contaminants is not affected by the trade ban.

13. CITES is likely to have a totally different impact, depending on the particular species being regulated. The trade provisions under CITES could sometimes result in unintended effects on the trade and competitiveness of some parties.

3. Relationship between trade provisions pursuant to MEAs and the WTO rules

14. The WTO Committee on Trade and Environment has been analysing the relationship between trade measures pursuant to MEAs and the WTO rules. The scope of these discussions is not to analyse all trade measures, but only those that may be deemed inconsistent with WTO provisions. 6/ In the debate in the WTO Committee, references have often been made to ex ante and ex post approaches to clarify this relationship. In the present report three approaches can be distinguished for analytical purposes: the status quo; the waiver approach;

accommodation of trade measures in WTO, and within that accommodation, the treatment of trade measures against parties and non-parties.

(a) The status quo approach

15. The status quo approach considers that there is already adequate scope under WTO rules to accommodate trade measures pursuant to MEAs and thus implies that there would be no need for any amendment or interpretation of WTO rules. However, the underlying reasoning may differ between WTO members. According to some, article XX already covers the use of trade measures pursuant to MEAs, and thus there is no need to amend WTO rules, particularly if such amendments require detailed and cumbersome criteria on necessity and effectiveness. According to others, however, WTO members should not be asked to give up their rights to challenge trade measures inconsistent with WTO rules, because they are taken pursuant to an MEA, in particular when they are not a party to the MEA.

16. It has been observed that it may be undesirable and unnecessary to establish a hierarchy between the WTO and a particular MEA and that the real issue at question is who has the jurisdiction on the use of trade measures in MEAs. In this regard, it has been stated by some that while the WTO would be in a position to examine the compatibility with WTO rules of unilateral measures adopted by WTO members, it would not be appropriate for the WTO to examine trade measures pursuant to MEAs of a global character, because of the equal legal status of the WTO and the MEAs.

17. Also, where trade provisions should be seen as part of a package which also involves facilitating mechanisms, such as access to finance and technology, the negotiators of the MEA could ensure that this package takes account of the interests of all countries, so that no country is induced to stay outside the MEA for economic reasons. Finally, it can be argued that if a large consensus on trade provisions can be reached in the framework of the MEA, trade restrictions on non-parties would generally not be necessary for the achievement of the environmental objectives of the MEA.

18. It has been argued that trade provisions under existing MEAs have never been challenged under the GATT/WTO, and it is unlikely that Governments will challenge in one forum what they have agreed to in another. This will be the case particularly if trade and environment officials in capitals work closely together and if Governments avoid introducing measures inconsistent with WTO rules in new MEAs from the outset. However, according to some, certain disadvantages are associated with this approach: it would not fully exclude the possibility that a trade measure taken under the provisions of an MEA might be challenged in the future, particularly by WTO members that are non-parties to the MEA, and it would reduce flexibility and predictability in the negotiation of trade measures in an MEA.

(b) The waiver approach

19. The waiver approach (sometimes also referred to as the "ex post approach") consists of a case-by-case granting of a WTO waiver. The waiver approach also implies that there is no need for any amendment or of a collective interpretation of article XX. However, according to some, the waiver approach

would appear to imply a hierarchy between two different sets of international legal instruments in favour of WTO.

20. Advantages of the waiver approach, according to some, is that MEAs reflecting a genuine multilateral consensus among concerned countries should find broad support among WTO members and thus a waiver could be secured, but the onus of demonstrating the merits of the case would rest with those seeking the waiver. According to some, this approach could thus prevent protectionist abuse. Further, according to some, given the flexibility that exists under GATT/WTO rules for the use of trade measures and doubts that may exist about the effectiveness of trade measures as an environmental policy tool, the scale of the remedy offered by the waiver approach is appropriate to the scale of the problem. In addition, it is sometimes argued that given the evolving nature of MEAs, as exemplified by the Basel Convention and successive amendments to the Montreal Protocol, there may be a preference for a case-by-case approach. In this context, it is worth noting that a number of Governments that supported the original trade measures in the Basel Convention may have reservations regarding the recent amendment that expanded their scope.

21. Disadvantages of the waiver approach, according to some, include that it might fail to provide negotiators of MEAs with the necessary degree of predictability or of security that the inclusion of trade measures would not be subsequently challenged. Also obtaining a waiver could be time-consuming and possibly cumbersome. Waivers are also time-limited and meant to treat exceptional circumstances, whereas environmental problems are increasingly recognized as requiring long-term and global solutions.

(c) Accommodation of trade measures

22. Some have argued that there is a need to provide greater predictability and security to negotiators of MEAs on the type of trade provisions which would be considered consistent with the rules and principles of WTO. This, it is argued, may enhance the environmental effectiveness of an MEA.

23. In accordance with this approach, called an ex ante, or environmental window, approach, conditions for the use of trade measures in MEAs would be defined, which - if met - would ensure that WTO would accommodate the measures. An example of this kind of ex ante approach can be found in the North American Free Trade Agreement (NAFTA), where if there is any inconsistency between NAFTA and specific trade provisions in MEAs, the obligations of the MEA shall prevail, to the extent of the inconsistency.

24. In discussions at the Committee on Trade and Environment (CTE), some proposals have been made, based on a combination of the ex ante and the ex post approaches. These could be implemented in different ways, for example:

(a) An amendment of article XX (b), adding the words "environment" and "measures taken pursuant to MEAs" complying with the provisions of the "understanding on the relationship between trade measures taken pursuant to MEAs and the WTO rules";

(b) An amendment of WTO article XX entailing an additional paragraph which refers to an "understanding" on the relationship between trade measures taken pursuant to MEAs and WTO rules.

25. According to this approach, an amendment would provide some security, since a panel would not examine either the legitimacy of the environmental objectives nor the necessity of the measures taken to achieve those objectives. Nevertheless, measures taken pursuant to an MEA would be governed by the headnote of article XX and be subject to the transparency requirements under existing WTO agreements. The criteria developed for this "understanding" relate to a definition of an MEA and are often referred to as procedural criteria.

26. The main concern with this approach stems from the fear of handing out a "blank cheque" to MEA negotiators in terms of the possibility of introducing measures otherwise inconsistent with WTO rules. Concern has also been raised about what this approach might mean for the existing balance of rights and obligations, especially in respect of some of the relatively more open-ended formulations of the approach. Indeed, it has been argued that it may involve renouncing the WTO principle of non-discrimination. In any case, WTO members would like to be sure that any trade measures otherwise inconsistent with WTO rules are necessary, effective or proportional.

27. Many observers have noted that, although efforts to clarify article XX may be desirable, they should be distinguished from attempts to broaden its scope.

28. Another approach is that any accommodation of trade measures for environmental purposes should apply across the provisions of the multilateral trading system as a whole, at least in respect of annex I of WTO. Such an accommodation might take the form of an understanding with specific references to other WTO agreements, as appropriate - for instance, GATT article XX exceptions and associated Agreement on Technical Barriers to Trade (TBT) and the Agreement on Sanitary and Phytosanitary (SPS) Measures, General Agreement on Trade in Services (GATS) article XIV exceptions, and relevant provisions of the Agreement on Trade-related Aspects of Intellectual Property Rights. The understanding should focus on the use of trade measures in cases of global or transboundary environmental problems.

29. According to this approach, such an accommodation would be dependent on the conformity of measures with both substantive criteria and procedural criteria reflecting the policy context in which the measures have been taken. (For details of those criteria, see below). Procedural criteria would help ensure that trade measures taken pursuant to an MEA represent a genuine international consensus, whereas substantive criteria would ensure that measures taken pursuant to an MEA were not unnecessarily disruptive of the multilateral trading system.

30. One of the suggestions that has been made for dealing with trade measures pursuant to a particular MEA applied between WTO members who are party to that MEA is that countries concerned could agree to waive their WTO rights for specific trade measures mandated by the MEA, in cases where such measures are inconsistent with WTO obligations. According to some, this would only constitute the formal recognition of a pre-existing situation. However,

according to some observers, problems may arise because the dispute settlement mechanisms in the MEAs are not well developed and because the interpretation or implementation of the measures may result in arbitrary discrimination. To avoid unintended interpretations, it has been suggested that parties to the MEAs may wish to ensure that the measures be clearly defined, including in terms of their product coverage and the duration of the measure.

31. As far as non-specific measures between parties are concerned, one approach that has been suggested is to accommodate in the WTO such measures based on clearly defined criteria covering aspects such as necessity, effectiveness, least trade restrictiveness and proportionality. Such accommodation could be achieved either by the "waiver" approach or through the dispute settlement mechanism of the WTO. It is hoped that by stating the criteria against which trade measures pursuant to an MEA may be tested, the WTO would help avoid disputes. The WTO should of course be notified of such measures. Some observers have, however, contended that tests such as necessity and effectiveness should not be carried out by WTO but are best left to the MEAs themselves.

32. According to some, trade restrictions against non-parties could be justified since non-parties do not have to implement measures aimed at meeting the targets of the MEA, and it would thus not be possible to hold that "the same conditions prevail". Others, however, have pointed out that countries may have legitimate reasons for not joining a particular MEA. Such reasons include differences in public policy priorities and objectives, which may be based, inter alia, on a country's view that scientific evidence is not persuasive, is controversial or is lacking; and the belief that joining or adhering to the required level of environmental standards of the MEA may be expensive (and a view that there are more pressing problems, environmental or otherwise, that deserve higher priority). Such differences may need to be taken into account in determining the concepts of "arbitrary" or "unjustifiable" discrimination. Further, with respect to the phrase "between countries where the same conditions prevail", it has been stated that the important factor is not whether a country is a party to an MEA; what are relevant are the actual differences in environmental protection commitments and requirements, taking into account the differing abilities, concerns and responsibilities of countries.

33. One concern is that trade measures against non-parties would appear to be more relevant when an MEA is not yet well established. According to this argument, when an MEA already has a large number of signatories, especially those that are significant current and potential contributors to the environmental problem, then trade provisions against non-parties may be of limited relevance. Trade provisions against non-parties are more relevant, however, when the MEA is not yet well established. Put otherwise, the use of trade restrictions which would otherwise be inconsistent with the WTO rules becomes more relevant in those cases where the concern about trade restrictions or an inequitable distribution of costs across countries is also greater. Smaller trading partners may be more vulnerable than larger trading partners.

4. Criteria for trade measures

34. The use of trade measures in MEAs should be subject to substantive and procedural criteria. Substantive criteria could include an analysis of the necessity, effectiveness, least trade restrictiveness and the proportionality of the measure. Some of these principles may be approached differently, depending on whether they are applied in the context of an MEA or the WTO. Procedural criteria could refer, inter alia, to an analysis of what constitutes an MEA, including the specificity of the trade measure used by the MEA.

(a) Necessity

35. It could be said that a trade measure is necessary to the achievement of an objective only if the objective cannot (reasonably) be achieved without it. This requirement for achievement means that for a measure to be necessary, it must be effective, perhaps in conjunction with other measures in achieving the objective. The GATT/WTO usage of the term "necessity" in article XX of the General Agreement has been based on the concepts of least-trade restrictiveness and/or least inconsistency with GATT/WTO obligations. A definition of environmental "necessity" is still evolving. Following UNCED, it may draw on various principles supported by Governments, including common but differentiated responsibility; equity and international cooperation; and the precautionary principle. These principles have been cited in various commentaries on the necessity of using trade measures in MEAs.

36. Broadly speaking, the "necessity" of using a trade measure will be linked to the type of environmental problem being tackled and is best left to the negotiators of the MEA. The "necessity" of using a measure inconsistent with WTO rules which could be covered by article XX would need to be judged by the WTO. Thus, from the point of view of WTO rules, given that a trade measure is necessary from an environmental perspective, the issue is, is it necessary that the trade measure be inconsistent with WTO rules?

37. Through panels, some experience has been built up regarding the definition of necessity in the WTO context. In some cases, WTO members may be reluctant to waive the WTO necessity test and thus to rely only on a determination of necessity in the MEA, given the difference in the two approaches and the fact that different questions are being addressed by MEAs and the WTO. According to some, however, a conceptual link should be established between the necessity test under WTO Agreements, especially article XX (b), and the political judgement made by negotiators of an MEA.

38. Trade measures between parties have been considered necessary when trade per se in the specified product represents the primary environmental problem addressed in the MEA. Trade measures in CITES prohibit or restrict trade in listed species, as a response to trade-related species loss. Trade measures in the Basel Convention control the transboundary movement of hazardous wastes and thereby aim to reduce environmental problems linked to inadequate disposal of imported wastes. Trade measures do not apply among parties to the Montreal Protocol. Trade measures among parties to an MEA need not be inconsistent with WTO rules.

39. The extension of trade measures to cover trade measures against non-parties has been considered necessary if trade could contribute to environmental degradation. For example, any trade in an endangered species which does not comply with CITES trade measures could undermine the environmental objectives of the treaty. Trade measures under the Basel Convention are aimed at reducing the risk that imported hazardous waste may not be managed in an environmentally sound manner. In both CITES and the Basel Convention, trade in controlled products with non-complying non-parties is therefore prohibited. Here again, trade measures need not be inconsistent with WTO rules.

40. Discriminatory trade measures against non-parties have been deemed necessary in the Montreal Protocol to encourage the fullest participation in the environmental objectives of an MEA, on the scientific assumption that the actions of non-complying non-parties may nullify the environmental benefits achieved by parties; to reduce circumvention of the environmental commitments by non-complying non-parties; and to address competitive concerns regarding the supply of controlled substances by non-parties, by restricting the distribution of those substances to parties. It is important to note that in CITES, the Montreal Protocol and the Basel Convention, exceptions exist which allow trade with non-parties which none the less comply with the substantive commitments of the MEA.

(b) Effectiveness

41. A measure can be considered to be necessary only if it is effective. However, not all effective measures are necessary. A distinction is needed between effectiveness and sufficiency: a trade measure may be effective in achieving a limited objective but insufficient to achieve a policy optimum which may or may not be identified in the MEA. Several considerations may be included in defining effectiveness of trade measures in MEAs, including legal effectiveness; economic efficiency; transparency and monitoring provisions; and international cooperation.

42. With regard to effectiveness in a legal context, one of the aims of trade measures against non-parties is to encourage the widest possible participation in the MEA. Some have suggested that the threat alone of non-compliance/non-party provisions has been effective in building wide participation in the MEA, although it is difficult to isolate the extent to which trade measures alone have contributed to compliance.

43. With regard to monitoring effectiveness, it can be observed that MEAs contain specific obligations related to periodic reporting, monitoring, implementation and verification of treaty obligations. These are essential to the transparency and effectiveness of the MEA. Considerable emphasis is therefore placed on improving national reporting and monitoring, and ensuring comparability of reported data.

44. One aspect of effectiveness is the extent of illegal trade. There is evidence of illegal trade in products covered by all three MEAs. The CITES secretariat, for example, notes that more work is needed to address illegal trade: one example is the threat of extinction of the rhinoceros because of international trade. Illegal trade by definition falls outside their relevant

reporting and monitoring systems. Parties are, however, responsible for reducing and eliminating illegal trade, since its existence directly undermines the effectiveness of the MEA. There appear to be no accurate data on illegal trade.

45. Analysing the effectiveness of trade measures in MEAs is complicated by several factors. One is that trade measures have generally been one of several policy instruments used in each MEA. It is therefore difficult to isolate and evaluate independently the extent to which a trade measure alone has contributed to the overall objectives of the MEA. A second factor is that the counterfactual scenario (analysing what would have happened if trade measures had not been used) is difficult. 7/ A third factor, related to both the issues of necessity and effectiveness, is that the expectations held at the time of the decision to include trade measures in an MEA may not be borne out by an ex post analysis of the actual role trade measures have played.

46. An analysis of the three agreements also reveals that is it difficult to judge the necessity and effectiveness of the use of trade measures. Though trade provisions in the Montreal Protocol may have induced some countries to become a party, it is contended by some that positive measures may have played a larger role. Quantitative analysis of the effectiveness of the Basel Convention remains difficult, largely because of a lack of reliable data related to hazardous waste generation; an absence of comparable data between national authorities; the absence of accurate baseline data for reported global trade in hazardous wastes; lack of clear definitions of wastes considered to be "hazardous"; and the absence of one major industrialized country and several developing countries as parties to the Convention. Several species included in the CITES appendices have stabilized or increased in population size since trade measures were introduced. There are however several other species covered by CITES which continue to approach extinction and some which are sustainably managed but continue to be subject to trade restrictions.

(c) Least trade restrictiveness and proportionality

47. The requirement of least trade restrictiveness embodied in the TBT and SPS Agreements has evolved from previous panel discussions and is related to the concept of necessity.

48. It is generally agreed that the objectives of an MEA should be achieved in the least trade restrictive way possible. Least trade restrictiveness can be interpreted in two ways: should trade measures be deemed necessary, then those that are least trade restrictive or trade distorting should be used; and preference should be given to first best environmental policies that address the problem at its source and to enabling mechanisms, such as access to finance and transfer of technology and technical assistance. In addition, voluntary measures - those for example, with regard to foreign direct investment - or market-based instruments may be more efficient than the use of trade measures in achieving the legitimate objectives of the MEAs.

49. The proportionality of a measure involves an analysis of the need for trade restrictions to achieve the environmental objective. According to an OECD document entitled "Trade principles and concepts", the concept of

"proportionality" 8/ involves weighing the trade costs of a measure against its benefits for other policy areas, and thus considering as necessary only measures with potential trade effects proportional to the objectives pursued. It has been noted, however, that environmental benefits arising from a particular measure may be difficult to quantify and that this concept may therefore be difficult to put into operation.

50. The notion of proportionality is already implicit in domestic policy-making but has been less commonly applied to traded products. Implicitly, the notion of proportionality has also been applied in the context of MEAs. For example, under the Montreal Protocol, the decision not to include under the trade provisions products "made with but not containing" ozone-depleting substances was, inter alia, based on the judgement that the environmental benefits would be insignificant in comparison to the economic cost that such a measure would entail.

(d) Definition

51. One of the procedural criteria relates to what constitutes an MEA reflecting a "genuine" multilateral consensus. In this regard, the following elements have been cited:

(i) Openness: negotiation of and participation in an MEA must be open on equitable terms to all interested countries;

(ii) Participation: broad participation of interested countries both in terms of geographical distribution and level of development. Moreover, the terms of participation of additional members must be the same as those of the original members;

(iii) Membership: adequate representation of consumer and producer nations of the products covered by the MEA;

(iv) Amendments: each should be addressed separately, in terms of scope, application, level of signatories, and trade provisions;

(v) Specificity: whether, and to what extent, the trade measure is specifically mandated in an MEA. This could, according to some, specify in a concrete manner under what circumstances and under what specific exceptions of the WTO which particular trade measures were taken;

(vi) Implementation: measures and instruments used nationally to implement an MEA.

(vii) Sound scientific evidence: accepted by all parties and including, where appropriate, the precautionary principle.

5. Dispute settlement mechanisms in MEAs and the WTO

52. If a dispute concerning a trade measure emerges between two countries that are both parties to the MEA and WTO members, the question might arise as to which forum should deal with the problem. This question has been addressed explicitly in some agreements. In most cases, however, it would generally be up to the complainant to determine whether to bring the case to the WTO or to MEA. According to many observers, efforts should first be made to resolve the case in the context of the MEA, which is more specific. The case should be brought to the WTO only if possibilities to find a settlement in the context of the MEA are fully exhausted. It has also been argued that MEA parties should set disputes through the dispute settlement procedures of the MEA and not resort to the WTO dispute settlement mechanism concerning obligations they have accepted in the MEA.

53. If a dispute arises between two WTO members of which only one is a party to an MEA, the country which feels that its WTO rights and obligations are adversely affected could only bring a complaint to the WTO. These rights would be restricted, however, through the approaches for accommodation discussed above. However, several WTO members have contested whether WTO rights should be made a function of membership or lack thereof in other treaties addressing a different policy area, falling outside the mandate and competence of WTO bodies.

54. The view is sometimes expressed that the settlement of trade disputes with environmental dimensions in the WTO could be more transparent and should allow for relevant environmental and scientific expertise to be called upon. The WTO Understanding of Rules and Procedures Governing the Settlement of Disputes provides an opportunity for each panel to seek information and technical advice from any individual or body which it deems appropriate. For example, information on factual issues concerning scientific or other technical matters raised by a party to a dispute can be obtained through an advisory report from an expert review group.

55. Concern has also been expressed that the recently set up appellate body of WTO and the dispute settlement mechanism should not be weakened and that the independence of panellists should be maintained. This is because the panel would only judge the WTO consistency of a measure and not the environmental justification for the measure. Some also feel that article XIII of the memorandum of understanding on dispute settlement is sufficient to incorporate additional expertise, and there may not be a need to accord special treatment to MEAs, while some others feel that special provisions are needed in the case of MEAs. It is worth noting in this context that UNEP will undertake a comparative analysis of the dispute resolution and dispute avoidance processes in MEAs and the WTO.

6. Positive measures

56. Positive measures, such as access to finance and technology transfer, are likely to be equally or more efficient in securing cooperation than trade restrictions and should be used in preference to the latter. They also tend to be more equitable, in keeping with the principle of common but differentiated

responsibilities. Some, however, consider that trade measures and positive measures are not substitutes and could be used in conjunction.

57. A major concern of developing countries is that trade restrictions pursuant to MEAs should not reduce the efforts to search for positive measures. According to this view, if the rights and obligations of an MEA under negotiation are such that a significant number of countries opt for not acceding to it, the trading system should not be used to "force" countries to become a party of the MEA. The appropriate forum for considering the whole range of policy options for achieving environmental objectives of the MEA, including positive measures such as access to technology and finance, is the conference of parties of the MEA. A concern of developing countries is that deliberations in WTO focus on trade measures, without providing an opportunity for an examination of positive measures. The Commission on Sustainable Development could provide a forum for discussing the broader economic and developmental effects of different policy options under MEAs.

58. Perhaps the clearest recognition of principle 7 of the Rio Declaration 9/ can be found in the instruments used for the implementation of the Montreal Protocol. Three instruments in this context are: differential phase-out schedules for developing and developed countries; financial assistance for article 5 (1) countries party to the Protocol; and the promotion of access to and transfer of technology.

59. The Commission, at its third session, invited several agencies to examine how positive measures could assist developing countries and countries with economies in transition in meeting multilaterally agreed environmental objectives. 10/ The UNCTAD Ad Hoc Working Group on Trade, Environment and Development, in its final report, recognized that positive measures could be valuable in assisting developing countries to meet the multilaterally agreed targets in keeping with the principle of common but differentiated responsibility. 11/ It also discussed incentives that encourage trade in environmentally friendly substitutes, voluntary mechanisms on foreign direct investment (FDI), technology transfer, and market-based instruments.

### 7. Guidelines for trade measures in MEAs

60. It may be useful to develop guidelines for MEA negotiators, to assist them in the consideration of measures that may be necessary to accomplish the objectives of the MEA. For example, this could include a consideration of whether the measures are directly related to the goal or target of the MEA; what is the coverage of the measure in terms of products, trade, production, consumption etc.; whether the effectiveness of the measure is measurable, least trade restrictive and based on sound science. They should also take account of relevant environmental and sustainable development principles, such as common but differentiated responsibility, and the precautionary principle. Since these issues involve a complex set of issues (legal, environmental, economic and developmental), different forums could make a contribution to consensus-building on them. The report of the Joint Session of Trade and Environment Experts to the OECD Council at the Ministerial Level also recommends the development of such guidelines. UNEP and UNCTAD, through their joint programme of work, could be involved in this process.

## B. Environmental policies and competitiveness

61. In analysing the linkages between environmental policies and competitiveness, several concerns have been raised. First of all, concern has sometimes been expressed that countries with stringent environmental regulations may lose trade and investment to countries where standards are less stringent or where enforcement is difficult. However, analysis and debate in different forums, in particular UNCTAD and OECD, has indicated that there is little or no empirical evidence to support such concern and that the case for trade measures is very weak, from both trade and environment points of view. In this context, demands for "green countervailing duties" or other protectionist trade measures have been firmly rejected in OECD and UNCTAD.

62. It is also contended by some that international competitiveness is only one of the factors that national Governments will take into account in assessing the efficacy of environmental policies. In considering various policy options, however, economic theory indicates that the set of environmental, social and trade policies that in combination provide the greatest welfare gains for the country should be adopted.

63. Secondly, it is argued that both competitiveness at the firm or sectoral level and the concept of national welfare are important. In many cases national welfare considerations may outweigh concerns about competitiveness at the firm or sectoral level. National welfare, however, depends, among other factors, on social preferences, which in turn differ in accordance with environmental conditions (including absorption capacities) and developmental conditions. Therefore, the effects on competitiveness of environmental policies cannot be examined in isolation of pressing economic and social requirements, which determine social preferences. Also, the possibilities for losses at the firm level in one sector to be compensated by gains in other sectors will differ from country to country, depending on such factors as the degree of production and export diversification and economic growth rates.

64. Thirdly, it is contended that while the short-term effects on competitiveness may be negative, the long-term effects may be positive. For example, properly designed environmental regulations can create incentives to reduce production costs or add value by innovation and increasing efficiency. Generally, positive impacts could arise in cases where increased resource productivity can be achieved or where price premiums are . Dynamic considerations could also include the development of markets for environmental technologies, services and environment-friendly products. However, these possibilities may be greater in countries with a capacity to compete in a growing international market for environment-related services, equipment and technologies and in new market niches created by products considered to be more environment-friendly. According to the report of the World Commission on Environment and Development, industrial countries have generally been more successful than developing ones in seeing to it that export product prices reflect the costs of environmental damage and of controlling that damage. There is thus a need to strengthen the capacity of developing countries to become more competitive in the international markets while at the same time developing their production and export capacities in a sustainable manner.

65. Fourthly, a preliminary study of the factors affecting competitiveness appears to suggest that in practice, developing countries, particularly the least developed among them, are frequently at a disadvantage on account of factors such as lack of information, technology, finance, environmentally friendly raw materials, and management skills. Also the sectoral composition of exports, the large share of small and medium enterprises (SMEs) in exports, and the low domestic demand for environmentally friendly products may make developing countries more vulnerable to negative effects on competitiveness. This may necessitate a particular emphasis on studying the effects of environmental policies on competitiveness in developing countries and on measures for ameliorating those effects.

66. UNIDO's work has shown that SMEs and resource-intensive industries are more likely than other firms or industries to suffer in terms of their competitive position as a result of certain types of environmental policies. Thus, special programmes and support systems may be required to improve the environmental performance of SMEs through appropriate policies, institutional support and technological assistance. UNCTAD's country studies also broadly support this conclusion.

67. Fifthly, analysis at UNCTAD and OECD indicate that adverse effects of environmental policies on competitiveness can be mitigated by appropriate policies at the national and international levels. The work of OECD has emphasized that one of the reasons for small effects could be prior consultation with industry before the formulation of environmental policies. This factor also emphasizes the need to build capacity in developing countries in the design of appropriate environmental policies, for appropriate transition mechanisms, and for the development of principles that would minimize the effects of external environmental policies on competitiveness.

68. A recent OECD report recognizes that complying with the environmental requirements of importing countries may raise particular competitiveness concerns for developing countries and countries with economies in transition. Preferred methods for OECD countries would be to facilitate market access and to provide them with technical and financial assistance directed towards environmental capacity-building.

69. Finally, while both positive and negative effects of environmental policies on competitiveness have been noted, there is not enough evidence to justify generalizations. Given the complexity of the linkages between environmental requirements and competitiveness, sound analysis is necessary, particularly research on the conditions/factors under which the impact on competitiveness is likely to be positive and under which, negative.

70. The Commission on Sustainable Development, at its third session, invited UNCTAD to carry out an analytical study on the relationship of environmental protection to international competitiveness, job creation and development, with the contributions of Governments, regional economic integration organizations, the private sector, non-governmental organizations and other relevant regional and international organizations. This study will be made available to the Commission at its fifth session, in 1997.

## C. Environmental labelling

71. The discussions on eco-labelling in the WTO Committee on Trade and Environment have focused on the question of whether or not non-product-related production and process methods (PPMs) used in eco-labelling schemes are covered by the Agreement on Technical Barriers to Trade, thus providing safeguards against unnecessary trade effects or possible protectionist abuse of eco-labels. Different views have been expressed. One is that they are already covered by the Agreement. A second view is that the use of non-product-related PPMs falls outside its scope. A third view is that the Agreement is ambiguous on this point. In particular, a proposal was made by a member country to clarify that the Agreement covers all forms of labelling, including eco-labelling, and to suggest that eco-labelling based on life-cycle analysis (LCA) should be developed according to multilateral agreed guidelines.

72. Ex ante transparency of eco-labelling schemes should be a minimum requirement for marrying trade and environment concerns. Such transparency could also include a consideration of the concept of "equivalent" criteria (see below). There is also some discussion at the International Organization for Standardization (ISO) and other forums on the establishment of multilateral guidelines for eco-labelling.

73. In cases where eco-labelling schemes have actual or potentially significant trade effects, there may be a need to establish "equivalent" criteria in order to provide consumers with the most relevant information and in order that eco-labelling schemes may stimulate adequate environmental improvements in the producing countries. As noted by the UNCTAD Ad Hoc Working Group on Trade, Environment and Development, specific process-related criteria may not be as effective and relevant in terms of environmental protection in the exporting country as they are in the importing country. In this context, differences in environmental conditions and the development dimension are important factors. The Working Group invited national Governments and standardization bodies to explore the scope for mutual recognition and equivalencies at an appropriate level of environmental protection. 12/ These approaches are also supported by the OECD Council at the ministerial level. The WTO Agreements on Technical Barriers to Trade (TBT) and on Sanitary and Phytosanitary (SPS) Measures recognize the principle of equivalency and mutual recognition. In the context of eco-labelling, ISO has agreed in principle to discuss the concept of equivalency and mutual recognition. UNEP has also established an expert group to develop modalities for mutual recognition and equivalency of eco-labelling schemes.

## D. Domestically prohibited goods

74. Several international and plurilateral agreements and instruments have been created which deal with domestically prohibited goods (DPGs) and other hazardous substances. Such agreements and instruments cover mostly hazardous waste, toxic chemicals and pesticides. Less attention has been given to particular consumer products, certain pharmaceutical products, cosmetics and certain foodstuff. One question is whether existing instruments, such as the Prior Informed Consent (PIC) procedure, are sufficient from the perspective of developing countries, in

particular with regard to product coverage and procedures. Another interesting question is the ability of exporters and importers to implement mechanisms that can minimize negative environmental effects of such trade, given the differences in infrastructure and other capacities.

75. A joint programme for the implementation of the PIC procedure was established by UNEP and FAO in 1990. 13/ FAO and UNEP are continuing their work on a draft legally binding instrument on the operation of the PIC procedure in order to make the currently voluntary, non-binding procedure more effective. The conclusion of a PIC convention, whereby parties would be obliged to apply the PIC procedure to banned or severely restricted chemicals, as contained in the amended London Guidelines for the Exchange of Information on Chemicals in International Trade and the FAO Code of Conduct on the Distribution and Use of Pesticides, is envisaged for 1997.

## E. Trade liberalization and the environment

76. In the absence of sound environmental policies, trade liberalization may lead to negative environmental effects in the short run. Therefore, the Commission, at its third session, recognized that trade liberalization needs to be complemented by the adoption of sound environmental policies. In turn, trade restrictions may have adverse environmental effects. Therefore, discussions at the WTO Committee on Trade and Environment on the effects of market access and trade liberalization on sustainable development have centred on:

(a) Tariff escalation;

(b) High tariffs on a range of products, including processed commodities and agricultural products, following the Uruguay Round;

(c) Production and export subsidies, especially for agricultural products;

(d) High internal taxes on tropical products.

The argument here is that lower tariffs and reduced tariff escalation in the major export markets may result in increased export earnings and diversification into higher value-added products for developing countries, thus supporting them in their efforts to reduce poverty and providing them with options for enhancing environmental protection.

77. In this context, agriculture is an important sector. 14/ The Producer Subsidy Equivalent (PSE) for the OECD as a whole, covering the main but not all agricultural products, continues to remain high at over 40 per cent in the 1990s (43 per cent in 1994), compared with 29 per cent in 1979-1981. Most studies that have tried to estimate the effects of agricultural trade liberalization indicate that a significant reduction in the level of subsidies in developed countries would lead to reduced production and exports in those countries. Many developing countries could benefit from improved access to developed country markets, higher world market prices and expanded export opportunities. Trade liberalization could perhaps also lead to greater price stability in international markets, although more research may be needed on this topic. 15/

## F. Sustainable management of commodities

78. Analysis and debate on the issue of internalization of environmental costs in the commodities sector has continued in various forums. In the agricultural sector, some work carried out by FAO on environmental costs associated with the production of agricultural commodities under different production systems shows that, in general, such costs are not large compared to the value of output and in most of the cases the benefits accruing from corrective measures could outweigh the cost of such actions. Therefore, since the pursuance of national environmental objectives generally does not entail loss of competitiveness, such objectives should not necessarily aim for uniformity across countries, recognizing that there can be environmental and other benefits from legitimate differences in natural resource endowments, national preferences and levels of economic development.

79. Discussions at the UNCTAD Standing Committee on Commodities and at two workshops on the internalization experience in developing countries and countries in transition, conducted by UNCTAD, in cooperation with UNEP in 1995, and similar work carried out by the OECD, the World Bank and the International Monetary Fund (IMF), and in the context of the Commission's ad hoc Working Group on Finance, highlighted the view that the related issues are not fully understood and that national experience on the use of regulatory and economic internalization instruments is insufficiently disseminated; there is a need to improve the exchange of information between policy makers regarding the efficiency and effectiveness of policy approaches under different economic, environmental and social circumstances. In this context, improved understanding of the implications of the use of internalization instruments and methodologies for evaluating their effectiveness are of key importance. Moreover, policy makers will appreciate that many instruments require close collaboration between different ministries as well as between central and local government.

## G. Biological diversity and trade issues

80. In dealing with bioprospecting, conservation goals may only be achieved by developing countries if the goals of sustainable use and equitable sharing are simultaneously achieved. It is important to note that for most developing countries, selling biological samples for minimal current compensation and rather modest, highly uncertain and long delayed royalties is unlikely to provide sufficient economic justification to protect ecosystems currently in danger. Leaving aside the complex issue of defining whether or not the "information" obtained from those samples produces significant income for biodiversity conservation, the fact is that it has generated a global multibillion dollar business. Although business would only see a limited economic incentive to invest in the conservation of biodiversity as a source of bioprospecting, developing countries rich in biodiversity may be more tempted, in a first stage, by the business opportunities that could be generated through any emerging market for biological resources, or what is viewed by some as a "green gold market". Thus, if the goal is to ensure conservation for bioprospecting, it may be possible to achieve it only when developing countries would have started to maximize benefits, both in terms of sustainable use and equitable sharing. In terms of sustainable use, and in order to ensure that the

emerging market for biological resources develops in a way that will generate significant resources for biodiversity conservation, it is necessary to devise policies and programmes that take account of the unique and complex characteristics of this market. In terms of equitable sharing, it is important that, as countries seek to position themselves in the emerging market for biological resources, they obtain the maximum possible benefit from each biochemical prospecting contract. 16/

81. Developing countries rich in biodiversity should seek to identify, develop and market a set of products and services that draws upon their unique biological and human resources. As they seek to position themselves in this emerging market, they may, at least initially, be able to negotiate greater benefits in the form of technology transfer and training than in the form of financial compensation.

82. UNCTAD's BIOTRADE Initiative seeks to promote the use of biological resources as a basis for sustainable development. The Initiative has been designed as an integrated programme intended to increase the capabilities of developing countries to compete in the emerging market for biological resources while also reducing transaction costs, increasing demand for biochemical resources, and enhancing conservation incentives. The Initiative has been broadly defined to include potential applications to the full diversity of biological resources and markets. However, there are unique biological, economic and institutional aspects involved in the use of genetic resources for food and agriculture that may limit or modify the applicability of the Initiative in that area.

83. The Convention on Biological Diversity has recognized the special nature of agricultural biodiversity, its distinctive features and problems needing distinctive solutions. In the case of agricultural biodiversity, it should be recalled that arrangements for access to plant genetic resources for food and agriculture and the sharing of the benefits are being negotiated by countries within the framework of the International Undertaking on Plant Genetic Resources for Food and Agriculture, which, since 1983, has been a key element in the FAO Global System for the Conservation and Utilization of Plant Genetic Resources. In a follow-up to Agenda 21, which recommended strengthening the Global System, the 1993 FAO Conference adopted a resolution in which it launched negotiations to revise the Undertaking, in harmony with the Convention. 17/ The revised Undertaking may become a binding international agreement to regulate access to plant genetic resources for food and agriculture and provide for an equitable sharing of the benefits. FAO has reported regularly to the Conference of the Parties to the Convention, which has declared its support for the negotiating process.

84. Finally, UNIDO, in cooperation with other agencies, is developing a three-pronged approach to capacity-building and technology transfer in the conservation and utilization of biodiversity:

(a) The development of national and regional policy guidelines which developing countries could use to formulate and implement national and regional policies for the sustainable exploitation of biodiversity resources. The

guidelines would include policy guidance for the building of institutional capacities;

(b) The preparation of guidelines on biotechnology acquisition, partnerships and development in developing countries. Those guidelines will address the critical policy and institutional considerations related to intellectual property over biomaterials and with respect to biotechnologies and important considerations in the national development of new businesses in both biotechnology and international trade;

(c) Operational (country level) programmes to build capacities in developing countries to prospect, catalogue and manage sustainable utilization of biodiversity and biotechnology.

## II. TECHNOLOGY TRANSFER AND CAPACITY-BUILDING

85. The relationship between intellectual property rights and the generation and transfer of environmentally sound technologies is an important issue in the trade and environment debate. Intellectual property rights could have two links with environmentally sound technologies - the promotion or generation of technology, and access to and transfer of technology. With regard to the second, it is to be noted that intellectual property rights are only one of the factors, and usually not the most important one, which affect the transfer of technology. Furthermore, the effects of intellectual property rights on the transfer of technology are, by definition, limited to technologies subject to such rights. Many technologies are in the public domain, either because intellectual property rights were never sought or because the term of protection granted has expired.

86. The relationship between the WTO Agreement on Trade-related Intellectual Property Rights (TRIPs) and the environment is nevertheless an important issue, in particular for developing countries. Issues discussed so far at the WTO Committee on Trade and Environment focus on the relationship of the TRIPs Agreement to access, transfer, and development of environmentally sound technologies; and the relationship between the TRIPs Agreement and MEAs which contain obligations relating to intellectual property rights. It has been argued that, from an environmental point of view, the objectives of the TRIPs Agreement should be to discourage the global use of technologies that are injurious to the environment, and to encourage the development and transfer of technologies which benefit the environment. In the Committee, a non-paper was submitted for discussion by a member country covering technologies related directly or indirectly to existing MEAs; technologies subject to current and future intellectual property rights and those which are easily copiable. With regard to technologies that are injurious to the environment, the non-paper argues that the TRIPs Agreement already covers this issue with regard to patents, though more clarifications may be required. With regard to technologies beneficial to the environment, some suggestions are made in the non-paper aimed at facilitating the global use of environmentally sound technologies by introducing more flexibility in the interpretation and implementation of the TRIPs Agreement (through the possibility of easier compulsory licensing, shortening the term of patent protection or, in extreme

cases, revocation or exclusion from patent protection), plant variety protection, layout designs and protection of undisclosed information. Others feel that the current provisions of the TRIPs Agreement are sufficiently clear to take account of environment concerns.

87. The Commission, at its third session, underlined efforts to make trade and environment mutually supportive through, inter alia, strengthening technical assistance for capacity-building undertaken by UNCTAD, UNDP and UNEP, including such means as integrating the consideration of all factors relevant to the formulation of trade and sustainable development policies. Technical assistance, through the provision of information and through seminars, should assist developing countries in their effective participation in trade negotiations and environment negotiations.

88. Policy-oriented studies carried out by research institutes in developing countries and countries with economies in transition under joint UNCTAD/UNDP and UNCTAD/UNEP projects constitute a relevant tool in examining the effects deriving from the linkages of environmental and trade policies, both at the national and international levels. Building on the UNCTAD/UNDP project, new projects have recently been designed and implemented by the secretariat of the Association of South-East Asian Nations and the Economic and Social Commission for Asia and the Pacific. The UNCTAD Working Group, in its final report, encouraged the continuation of these studies by UNCTAD in cooperation with UNDP and UNEP.

89. The International Trade Centre (ITC) also has an important role to play in technical assistance. In its work programme on trade and environment, ITC envisages concentrating on four areas:

(a) Incorporation of environmental considerations into national trade promotion and export development strategies and the building of associated institutional capacities;

(b) Provision of trade information to facilitate adjustment by recipient country exporters to environmental requirements of international markets;

(c) Identification and pursuit of commercial opportunities for beneficiary country exporters within the rapidly growing international market for environmental goods and services, and the generic promotion of "green" products from beneficiary countries;

(d) Information and advice on the legal framework and operational procedures governing imports of goods that are hazardous to the environment. 18/ UNCTAD and ITC have established a close cooperation on issues related to trade and environment and are envisaging to prepare a joint interregional project.

Notes

1/ "Trade measures for environmental purposes taken pursuant to MEAs: recent developments" (PC/STE/W/3).

2/ Report of the Conference of FAO, Twenty-eighth Session (C95/REP), appendix I. See in particular articles 11.2 and 11.3.

3/ ... to the Vienna Convention for the Protection of the Ozone Layer (United Nations Treaty Series, Registration No. 26369, vol. 26 (1987), p. 1,550.

4/ UNEP/BC/94/1.

5/ Normally, the conditions would require prenotification to the recipient country, and its consent, prior to export. These restrictions were introduced primarily because transboundary movements of hazardous waste could create a disincentive for properly managing and reducing hazardous wastes at the source, and because the hazardous waste trade resulted in the transfer of damaging pollution, often to countries ill-equipped to cope with it. See "The policy debate on trade, environment and development" (TD/B/WG.6/10).

6/ This includes measures that would possibly conflict with the most-favoured-nation clause (article I), national treatment obligation of non-discrimination between like products of foreign and domestic origin (article III) and/or the prohibition of or quantitative restriction on trade (article XI). However, discriminatory measures can, under certain conditions, qualify for GATT exceptions (article XX).

7/ CITES, for example, the likely first best measure is for the parties to do their utmost to institute internal measures that will promote the recovery of the population of the species concerned or maintain it at levels that might not require the inclusion of the species in the CITES appendices (i.e., complete de-listing). In the Basel Convention, the first best policy option would likely be the minimization of hazardous wastes at source and disposal of wastes as close to the source of generation as possible. These two principles are contained in the preamble of the Convention.

8/ The concept of proportionality is not explicitly referred to in the WTO Agreements. However, the Agreement on Sanitary and Phytosanitary Measures refers to "the relative cost-effectiveness of alternative approaches to limiting risks" (article 5.3). See "Trade principles and concepts" (OECD/GD(95)141).

9/ Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992 (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I. Resolutions Adopted by the Conference, resolution 1, annex I.

10/ Official Records of the Economic and Social Council, 1995, Supplement No. 12 (E/1995/32).

11/ TD/B/42(2)/9-TD/B/WG.6/11.

12/ Ibid.

13/ PIC refers to the principle that international shipments of chemicals, including pesticides that are banned or severely restricted in order to protect human health or the environment, should proceed only with the explicit agreement of the national authority in the participating importing country. PIC procedures are being used in the context of the Basel Convention, the London Guidelines for the Exchange of Information on Chemicals in International Trade and the FAO International Code of Conduct on the Distribution and Use of Pesticides.

14/ With regard to agriculture, the Commission, at its third session, requested FAO, in collaboration with UNCTAD, WTO, UNDP, UNEP and other relevant organizations, to analyse the implications for sustainable agriculture and rural development of the Uruguay Round. The study has been initiated at FAO and, after consultations with UNCTAD, WTO, UNEP and other relevant organizations, will be completed in the course of 1996 for submission to the Commission in 1997.

15/ A recent FAO study reaches the conclusion that the impact of the Uruguay Round on market instability is still an open question. Moreover, it should be noted that the literature largely concerns temperate zone products, on which only a few developing countries rely for export earnings. See Impact of the Uruguay Round on Agriculture (Rome, FAO, 1995).

16/ For a more detailed discussion about characteristics of the emerging market for biological resources, see A. Artuso, "Marketing and financial arrangements for biochemical prospecting and sustainable development", a paper presented to the International Conference on Financing Conservation of Biodiversity, held at Harare, Zimbabwe, 13-15 September 1995.

17/ In resolution 7/93 FAO was requested to provide a forum for negotiations among Governments for the adaptation of the International Undertaking, in harmony with the Convention on Biological Diversity; consideration of the issue of access on mutually agreed terms to plant genetic resources, including ex situ collections not addressed by the Convention; and the issue of farmers' rights.

18/ Trade and the Environment - The role of ITC (Geneva, International Trade Centre, 1995).

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